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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SDPB HOLDINGS LLC,

Plaintiff and Appellant,

v.

DAWN TAGGETT,

Defendant and Respondent.

D074323

(Super. Ct. No.  
37-2017-00016019-CU-BT-CTL)

APPEAL from an order of the Superior Court of San Diego County,

Katherine A. Bacal, Judge. Affirmed.

Segreti Law Office and Louis M. Segreti for Plaintiff and Appellant.

Schwartz Semerdjian, John A. Schena, William F. Small, and Alison K. Adelman  
for Defendant and Respondent.

SDPB Holdings LLC (SDPB) appeals from an order granting Defendant Dawn Taggett's special motion to strike pursuant to Code of Civil Procedure section 425.16, the anti-SLAPP<sup>1</sup> statute (the anti-SLAPP statute).<sup>2</sup> SDPB was developing a residential property next door to Taggett's home. Taggett made several statements about the property (1) during a conversation with the purchaser of the property and a few other neighbors at a January 2017 meeting and (2) in a neighborhood flyer distributed that same month. The buyer later canceled his contract with SDPB, and SDPB brought claims against Taggett related to interference with the project and defamation.

The trial court found Taggett's statements were covered by subdivision (e)(2) of section 425.16 as statements made in connection with an issue under official consideration or review by an executive body. At the time the statements were made, the City of San Diego had issued a Civil Penalty Notice and Order regarding a necessary grading permit at the property, and it had placed a hold on a demolition permit. The trial court further found that SDPB failed to show a likelihood of prevailing on its claims, principally on causation grounds. The buyer of the property asserted in a deposition that

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<sup>1</sup> SLAPP is an acronym for strategic litigation against public participation. The anti-SLAPP statute provides a procedure designed for striking complaints in harassing lawsuits that challenge the exercise of constitutionally protected free speech rights. (See *Sweetwater Union High Sch. Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940, citing *Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 196.)

<sup>2</sup> All statutory references are to the Code of Civil Procedure unless otherwise indicated.

he did not cancel the contract because of anything Taggett (or the other neighbors) said and that he never saw the flyer.

On appeal, SDPB argues that the statements were not made in connection with an official proceeding, and that in evaluating the likelihood of success on its claims the court improperly drew inferences in favor of Taggett and ignored evidence in SDPB's favor. Having reviewed the record and applicable law, we are not persuaded by SDPB's arguments and accordingly affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Project Overview*

In 2013, SDPB acquired the property at issue, which had an existing residential structure, in the Hillcrest neighborhood of San Diego where Albatross Street dead ends into a canyon. SDPB also purchased three undeveloped parcels of land adjacent to the property.

In 2016, SDPB entered into a contract with nonparty Pete Samulewicz for the redevelopment and sale of the property. The City of San Diego approved development plans for a new single-family residence on the property, as well as for development of a second lot alongside the lot to be developed for Samulewicz. The city also later approved revised plans that accommodated changes requested by Samulewicz. Samulewicz understood the contract to promise that the house would be built and ready by December 2016.

B. *Notice and Order to Obtain a Grading Permit*

In December 2016, the City of San Diego Fire-Rescue Department, Fire Prevention Bureau notified SDPB by letter that it was required to clear trees and brush on the property. In response, SDPB's contractors undertook clearing efforts, but upon inspection the city determined that SDPB needed a grading permit for its work. On January 27, the Code Enforcement Division of the city's Development Services Department issued a Civil Penalty Notice and Order (Notice and Order) requiring SDPB to obtain a permit and implement measures to manage erosion and related issues. The Notice and Order identified several violations at the property, including grading and removal of trees, vegetation, and earth, on a steep slope without required inspections or permits, which "will result in possible mud slides, instability of the slope, uncontrolled water run-off, storm water contamination and storm drain pollution." The Notice and Order also noted that the unpermitted grading resulted in the "damage/destruction" of the public right-of-way abutting the east side of the property. As of February 1, 2017, no grading permit had been issued.

C. *Demolition Permit Cancellation and Hold*

By January 4, 2017, a demolition permit for the property had been canceled. According to Taggett, however, on January 14 SDPB began demolition and grading of the property. SDPB, on the other hand, claims that unpermitted demolition activity never occurred at the property, but it does concede that the demolition permit lapsed for a period during January 2017. On January 18, city representatives visited the property and required SDPB to cease work until it obtained the necessary permits. That same day, a

Cal-OSHA associate safety engineer also visited, and "danger" notices and asbestos warning tape were placed at the property. By January 30, SDPB's demolition permit had been renewed.

D. *Statements Made at the Neighbor Meeting*

In early January 2017, Samulewicz met with Taggett and three other neighbors to discuss their concerns with the property's development. Samulewicz characterized the meeting as amicable and a "nice dialogue." Taggett told him she wanted his house "moved 15 feet" and "didn't want a second house built." She also mentioned "there was asbestos [on the property] and it got tested." She, or other neighbors at the meeting, stated that SDPB was "building . . . or . . . hauling things away without a permit" and "operating without permits [for] demolition," and that "there was asbestos that was included, so they all have to get tested for asbestos." Carol Emerick, one of the other neighbors, also told Samulewicz that SDPB's planned build-out of the second lot would be about 5,200 square feet. After the meeting, Samulewicz investigated the issues that the neighbors had raised.

E. *Statements Made Via the Neighborhood Action Newsletter Flyer*

In late January 2017, Taggett and other neighbors were involved in the preparation and distribution of flyers related to development of the property. The 3800 block of Albatross Street has a box available to the public that is used to relay news about community events and other neighborhood-related information. The neighbors put the flyers in this community information box. They styled the flyer as a "Neighborhood Action Newsletter" and below this title, included the following text:

**"See Something, Say Something:** If you see any demolition and/or grading occurring at 3844 Albatross Street, and/or in the adjacent canyon, please note that permits have not been approved for these activities (this notice will be removed once permits are approved). Additionally, asbestos and lead have been confirmed on the premises. **If you witness any illegal and/or unpermitted activity, you are encouraged to call any of the relevant agencies".**

Below this text block, the flyer listed contact information for various divisions of the City of San Diego, including Code Enforcement. After learning that a demolition permit had been issued, on February 1 Taggett went to remove the flyers from the community information box, but there were none remaining.

F. *Cancellation of the Contract*

In February or March 2017, Samulewicz met with SDPB's manager, Michael Donovan. They discussed delays associated with the project, and Donovan told him that the house would ultimately be finished by July or August of 2017. Samulewicz did not trust Donovan's representation. On April 7, 2017, Samulewicz sent a letter canceling the contract. Samulewicz requested the "escrow be canceled due to the failure to complete this house by the December 1st deadline, the lack of progress in construction, and the fact the delay has direct impact on me financially."

G. *Procedural Overview*

In May 2017, SDPB and its manager, Donovan, filed a complaint against neighbors Robert and Carol Emerick and Does 1-25. SDPB claimed (1) intentional interference with contract; (2) intentional interference with prospective economic

advantage; (3) slander; (4) libel; and (5) trade libel.<sup>3</sup> The Emericks answered and filed an anti-SLAPP motion. While it was pending, SDPB added Taggett as a Doe defendant.

The trial court granted the Emericks's motion, after which Taggett filed her own anti-SLAPP motion. While the second anti-SLAPP motion was pending, SDPB settled with the Emericks. During that period, the court permitted limited discovery so that SDPB could depose Samulewicz, noting an outstanding "question as to whether Samulewicz, who is not a party, cancelled his contract because of [Taggett's] statement." Following briefing and a hearing, the court granted Taggett's motion.

## DISCUSSION

### A. *Legal Standards*

We review de novo an order granting a special motion to strike under section 425.16. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325–326.) In doing so, we independently determine each of the two prongs of anti-SLAPP analysis: (1) whether the defendant has shown that a cause of action arises out of an act done in furtherance of the defendant's exercise of a right to petition or free speech under the United States or California Constitution; and, if so, (2) whether the plaintiff has demonstrated a probability of prevailing on the claim. (*Sylmar Air Conditioning v. Pueblo Contracting Services* (2004) 122 Cal.App.4th 1049, 1056; *Governor Gray Davis Com. v. Am. Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 456.) The defendant bears the burden

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<sup>3</sup> Donovan also originally alleged assault, battery, and intentional infliction of emotional distress against Robert Emerick individually.

of proof on the first prong; the plaintiff on the second. (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1, 14, 19; *Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 768.) We do not weigh evidence or resolve conflicting factual claims. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384–385.) Instead, we conduct a limited inquiry into "whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment." (*Ibid.*) We accept the plaintiff's evidence as true and evaluate the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. (*Ibid.*)

B . *Taggett's Statements Were Made in Connection with an Official Proceeding.*

The trial court found Taggett's statements covered under subdivision (e)(2) of section 425.16, which applies to "any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law." According to the trial court, Taggett's statements were made in connection with the city's review of the grading permit, for which a Civil Penalty and Notice Order was issued on January 27, as well as the hold on the demolition permit that was pending approval by code enforcement, which was renewed by January 30 according to SDPB. The court also noted that OSHA proceedings regarding the property's development were still pending as of February 2018. Because the court found the statements fell within subdivision (e)(2), it declined to analyze whether they were also protected under subdivision (e)(3) and/or (4).

We agree with the trial court. San Diego's city government is an executive body for the purposes of the anti-SLAPP statute. (See *City of Costa Mesa v. D'Alessio*



*Investments* (2013) 214 Cal.App.4th 358, 373; accord *Maranatha Corrections, LLC v. Department of Corrections & Rehabilitation* (2008) 158 Cal.App.4th 1075, 1085.) The city was reviewing both the grading and demolition issues at the time the statements were made, i.e. the January 2017 publication of the flyers and the in-person neighbors meeting the same month. The demolition permit issue was not resolved until January 30, and the grading permit issue had not been resolved as of February 1. According to Taggett, she attempted to retrieve the flyers on February 1 (though they had all been taken), the same day she was made aware that the temporary demolition permit had been lifted, and SDPB did not provide any evidence to rebut her account. All of the statements made at the meeting or through the flyers, in context, relate to the city's review of these issues.<sup>4</sup>

SDPB proposes several reasons for why some or all of Taggett's statements are not covered under subdivision (e)(2) of the anti-SLAPP statute, none of which is persuasive. First, it contends that the city's review concerned grading and brush clearing and was not related to demolition work. But SDPB concedes that the demolition permit "lapsed" in January 2017; evidence indicates that it lapsed because it was "cancelled"; and that during January 2017, there was a "hold on the issuance of the new Demolition permit." SDPB has provided no evidence to the contrary.

Second, SDPB complains the trial court only analyzed statements that Samulewicz directly attributed to Taggett and failed to consider statements she made jointly in

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<sup>4</sup> Because we find that the statements at issue are protected by subdivision (e)(2), we decline to address the parties' additional arguments related to other possible bases for protection under the anti-SLAPP statute.

coordination with other neighbors. Specifically, SDPB claims the court failed to analyze the neighbors' statements that relate to demolition and asbestos, as well as Carol Emerick's statement that SDPB was planning to build a 5,200 square foot house on an adjoining parcel. The asbestos comments were inextricably linked to the demolition-related statements, all of which were made in connection with the city's demolition and/or grading review. The only statement that arguably might not relate to the grading and/or demolition review is Emerick's statement at the January 2017 neighbors' meeting that SDPB's build-out of the second lot would be more than 5,000 square feet. (That statement was false; as Samulewicz found when he investigated this point about a week later, the planned build-out was about 2,200 square feet.) SDPB argues that Taggett adopted the statement because she initiated the meeting and did not "distance herself from the statement *during the meeting*." In isolation, this statement may not directly relate to the demolition or grading issues being reviewed by the city, but in the context of the neighbors' meeting, which primarily concerned the demolition and grading concerns, Emerick's statement was made "in connection with" those issues.<sup>5</sup>

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<sup>5</sup> As we later explain (section C.2, *post*), there is insufficient evidence to show that Taggett adopted Emerick's statement as her own.

C. *SDPB Failed to Show a Likelihood of Prevailing on the Merits of its Claims.*

Once the defendant and moving party on an anti-SLAPP motion demonstrates that the plaintiff's claims arise out of protected activity, the burden shifts to the plaintiff to show a likelihood of success on the merits. Here, the trial court properly concluded that SDPB failed to satisfy this burden.

1. *Interference Claims*

SDPB brought claims for intentional interference with contract and intentional interference with prospective economic advantage. To succeed on these claims, SDPB must show, among other elements, that Taggett acted intentionally in a manner designed to disrupt the relationship. (See, e.g., *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 514 [intentional interference with contract]; *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1290 [intentional interference with prospective economic advantage].) The trial court found no evidence to support causation, principally on the basis of Samulewicz's assertions in his deposition that he did not cancel the escrow because of anything Taggett said at the meeting and that he had never seen the flyer. The court noted that Samulewicz instead said that he canceled escrow because of the delay—in his words, because "there is no house and no house in sight."

SDPB claims that Taggett and the other neighbors "coordinated an effort to deter Samulewicz from closing on the Property," and expressed "the clear message that they would lie, bully, and intimidate to stop, stall or change the planned development without regard to the cost to SDPB or Samulewicz." According to SDPB, the "neighbors'

scheming was successful." SDPB also submits that the temporal proximity between the neighbors' meeting and the contract cancellation is, alone, sufficient to show causation.

SDPB contests the trial court's finding that Samulewicz's reason for canceling escrow was the delay attributable to SDPB. Instead, SDPB offers that either the neighbor conflict directly caused the cancellation, or that it did so indirectly by causing the lion's share of the delay. SDPB relies on Donovan's declaration as well as three passages from Samulewicz's deposition. In those passages, Samulewicz describes the delays in the development of the property, and he acknowledges that the delays were partly the result of additional design changes and other factors outside of the developer's control.

But when read in full, the evidence of Samulewicz's motivation for canceling the contract—his letter canceling the contract and the transcript of his deposition—fully accords with the trial court's apt characterization and analysis. Samulewicz's statements reveal that his primary reason for canceling the contract was the delay associated with the project and that SDPB was chiefly responsible for the delay. And, as relevant to the specific issue before us, the statements reveal that the neighbors' actions and statements did not cause him to cancel the contract. The key statements from Samulewicz's deposition are as follows:

"Q. Why did you cancel the purchase contract or request to cancel?

"A. There is no house. [¶] . . .

"Q. Can you identify some of [the reasons for canceling the contract], those that you're aware of?

"A. Yeah. You can't believe a word Michael [Donovan] says half of the time. I don't know. He'd say one thing and then there was another."

"Q. [Were the neighbors] fighting just to fight?

"A. . . . [T]heir argument seemed valid . . . Michael [Donovan] admitted that he did something without a permit. Later on he admitted that to me. It was just an oversight he said. [¶] But it was more that it was everything combined and the splitting hairs . . . because they didn't want the house built. [¶] . . . [¶] [T]hat was the context for what I was trying to say [in the letter canceling the contract]. Michael, you need to quit fighting with the neighbors. You guys need to solve this. But there's no house and I'm done."

"Q. . . . What do you mean by nonsense from the neighbors? Can you be more specific about what you mean by that?

"A. . . . This whole conflict lacks basis. But [that is not] why I didn't buy the house. I didn't buy the house because there's no house.

"Q. But, in part, because there was a conflict?

"A. Right."

"Q. Did anything that you heard from Dawn Taggett in this January meeting cause you to cancel your contract with SDPB?

"A. Not because of it. [¶] . . .

"Q. Anything you heard from Carol Emerick at the January 2017 meeting cause you to cancel your contract with SDPB?

"A. Not in and of itself, no."

"Q. Is it your testimony that Dawn Taggett caused any of the delay . . . ? [¶] . . .

"A. . . . [E]very time Michael [Donovan] turns around the police are showing up at the property because the neighbors are calling the police. So based on that, I'm under the understanding that she

causes—not she, the neighbors, I don't know who the neighbors are, cause these delays. Well, they caused some delays.

"Q. [Y]ou canceled . . . the contract because the house wasn't there; correct?

"A. Yeah. And everything that—literally from the beginning that what keeps on being said to be done never happens literally. And how much longer am I supposed to go?"

"Q. So you didn't rely on any of the representations made by any of the neighbors at that meeting as truthful or accurate when you are making your decision [to cancel]? [¶] . . .

"A. My decision to cancel this escrow had to do with the fact that there is no house. This thing is all over the place. The facts are all over the place. That right there, that that was going on, proves my gut right. And I want to—and I wanted to move on, get this house built, move into my nice neighborhood."

"Q. . . . [Y]ou didn't rely on any of the statement[s] that were made by . . . neighbors at the January 2017 meeting as truthful and instead, in fact, you went and researched all of the issues they presented? [¶] . . .

"A. I didn't rely on anything other than the fact there's no house and no house in sight."

Although Samulewicz appeared uncomfortable with the neighbor conflict and attributed some part of the delay to it, his statements when considered in full are clear in two respects. First, the developer-caused delay was his primary motivation for the cancellation. Second, and more importantly here, the neighbors' actions did not cause him to cancel the contract. Certainly, the neighbor conflict was another reason for Samulewicz's unhappiness with the development process, and according to him, both sides were responsible for some part of the conflict. But SDPB has failed to provide sufficient evidence to show that any of Taggett's statements, whether attributable directly

to her or to the neighbors generally, were a substantial factor causing Samulewicz to cancel the contract.

Furthermore, there is no evidence whatsoever of any concerted design or scheme intended to disrupt SDPB's relationship with Samulewicz. SDPB seeks to demonstrate such a scheme through a single piece of evidence, a letter sent by Robert Emerick in 2011 to a prior owner of the property at issue. In its opening brief, SDPB relies on a quote from the letter, which in context is not helpful to SDPB: Emerick "personally will do everything [he] can to oppose this projected construction plan." SDPB omits the next sentence, which spells out his plan: "This includes everything from speaking at neighborhood planning committee meetings, talking to city planning and zoning departments, and filing lawsuits if necessary." These are entirely appropriate actions that Emerick, with proper basis, is legally entitled to take. The Emericks, Taggett, and the other neighbors may have differences of opinion with SDPB about balancing urban development and conservation. So too do many Californians disagree with their neighbors on these difficult issues of preservation and accommodation. But Taggett and the other neighbors maintain the right to public participation in the city's review of permitting issues, and the evidence shows no design or scheme intended to disrupt SDPB's contractual relationships. Instead, the record reveals a relatively civil, polite dialogue among Samulewicz and the neighbors accompanied by the distribution of a flyer containing factually true information. It demonstrates that Samulewicz pins the responsibility for his cancellation largely on SDPB-caused delays and that the statements

at issue did not cause the cancellation. SDPB has therefore failed to show a probability of prevailing on its interference claims.

## 2. *Defamation Claims*

SDPB further alleged slander, libel, and trade libel against Taggett. The trial court found SDPB failed to provide evidence to support the claims' essential elements of falsity and causation. SDPB argues that the text of the flyer implies that SDPB had been or was conducting unpermitted demolition activity. Furthermore, it contends that coupling statements about lead and asbestos on the property, irrespective of their veracity, with statements about demolition leads to the inference that "unpermitted demolition activity was or could be creating risks of exposure to hazardous substances." It also emphasizes that because SDPB had a demolition permit no later than January 30, at least some time elapsed before the neighbors claimed to have stopped circulating the flyer on February 1.

As a matter of California law, SDPB is right that flyers or pamphlets which could reasonably be understood as implying defamatory statements may give rise to a cause of action. (See *Weller v. American Broadcasting Companies, Inc.* (1991) 232 Cal.App.3d 991, 1002–1003.) But here, the flyer and the statements made at the neighbors meeting do not. Rather, the flyer provides a few facts—all of which are true—and lists some relevant resources. Similarly, at the January 2017 neighbors' meeting, all of the statements attributed to Taggett were true or, in the case of her statement that she hoped the second house would not be built, a mere nondisparaging expression of hope.

Likewise, all of the other neighbors' statements were true, with one exception. Carol Emerick's comment that the house on the second lot would be about 5,200 square



feet was false; that figure roughly corresponded to the build out of both of SDPB's planned developments, i.e. the one intended for Samulewicz and the second lot. This may have been either an honest mistake or an intentional falsehood on Emerick's part. But SDPB's evidence—which shows that Taggett initiated the meeting, invited Emerick, and failed to correct the statement—does not mean that Taggett adopted the statement, and SDPB has further failed to demonstrate how such an adoption would amount to defamation in the absence of any publication or communication by Taggett. (See *Trail v. Boys and Girls Clubs* (Ind. 2006) 845 N.E.2d 130, 137 ["It would be an odd use of the defamation doctrine to hold that silence constitutes actionable speech."]; *Wayment v. Clear Channel Broad., Inc.* (Utah 2005) 116 P.3d 271, 287 ["an individual's adopted admission of an allegedly defamatory statement does not equate to the individual's own publication of the statement, an essential element of a defamation cause of action"]; *Wilson v. Meyer* (Colo.App. 2005) 126 P.3d 276, 281 [plaintiff cannot establish publication by showing the defendant silently adopted a defamatory statement].) Finally, even if Taggett had adopted Emerick's statement, we nevertheless conclude that taken together with all other statements it still does not amount to actionable defamation because SDPB provided no evidence that what any neighbor said caused any damages or would naturally tend to injure. (See *Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645–646.) Specifically, as we have discussed, SDPB failed to show that the statements caused the cancellation of the contract.

Finally, neither the timing of Taggett's retrieval of the flyers nor the timing of Samulewicz's cancellation letter supports SDPB's arguments. As noted, Taggett

attempted to retrieve the flyers the same day she was made aware that SDPB had a valid demolition permit, two days after the temporary hold had been lifted. Accordingly, Taggett made every reasonable effort to prevent distribution once they were no longer factually true. SDPB also claims that the "timing of [the] letter alone, which was sent shortly after his meeting with the homeowners, is sufficient evidence of causation in the context of this anti-SLAPP motion." But the neighbors' meeting occurred in January 2017, and the letter was sent on April 7, 2017. If anything, the timing of the letter supports a contrary conclusion—that Samulewicz's February or March 2017 meeting with Donovan, at which they discussed SDPB's delay, caused the April 2017 cancellation. Therefore, SDPB has failed to show a probability of prevailing on any of its claims against Taggett.

#### DISPOSITION

The order is affirmed. Respondent is entitled to costs on appeal.

DATO, J.

WE CONCUR:

HUFFMAN, Acting P. J.

GUERRERO, J.